1-Sales Tax Revision Petition No.26/2002
2-Sales Tax Revision Petition No.27/2002
3-Sales Tax Revision Petition No.28/2002
4-Sales Tax Revision Petition No.29/2002
5-Sales Tax Revision Petition No.30/2002
6-Sales Tax Revision Petition No.31/2002
7-Sales Tax Revision Petition No.32/2002
8-Sales Tax Revision Petition No.33/2002
9-Sales Tax Revision Petition No.34/2002
10-Sales Tax Revision Petition No.35/2002
11-Sales Tax Revision Petition No.36/2002

Asstt.Commnr. Commercial Taxes
Special Circle, Rajasthan Jaipur
Versus
M/s National Engineering Industries Ltd Jaipur

Date of Order ::: 18/08/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. R.B.Mathur, for petitioners (Revenue)
Mr. Alok Sharma, for respondent (Assessee)

At joint request, these revision petitions arising out of identical controversy among self-same parties, have been heard together and being disposed of by this common order.

Instant revision petitions have been filed by the Revenue against common order dt.30/10/2001 passed by Rajasthan Tax Board Ajmer whereby common order dt.26/11/98 passed by appellate authority (II), Commercial Taxes, Jaipur was upheld & the order dt. 22/08/98 passed by assessing authority (Asstt.Commr. Commercial Taxes Special Circle Jaipur) has been set aside, pertaining to assessment orders for the years 1970-71 to 1981-82. Initial assessment orders made by Assessing Authority finally came up before this Court for adjudication by way of Reference and this Court vide its order dt.27/11/91, remanded the matter back to the Assessing authority to initiate de novo proceedings and accordingly under directions of this

Court fresh proceedings were initiated by Assessing Authority for assessments in question.

U/s 10-B(2) of Rajasthan Sales Tax Act, 1954 ("***the Act***") statutory limitation has been provided of two years and on application, Commissioner, for reasons to be recorded in writing in any particular case, is competent to extend period further not exceeding six months. Indisputably, after the order passed by this Court on 27/11/91, assessing authority passed assessment orders on 22/08/94 on expiry of two years which is statutory period provided U/s 10-B of the Act, application was filed before competent authority (Commissioner) to extend the period further for six months which was extended; and thereafter further extension was sought of six months, as such the period approved by the Commissioner and for assessment, total period of three years commencing from 27/11/91 was made available and within such period, assessments were made by assessing authority on 22/08/94.

M/s National Engineering Industry (Assessee) preferred appeals before Appellate Authority (Deputy Commissioner (Appeals) Rajasthan) (II) Jaipur and pointed out that after orders were passed by this Court on 27/11/91, two years' period is statutory limitation as provided for making assessment U/s 10-B of the Act and only extension for which Commissioner has been made competent is to the extent of six months only and no further extension is permitted under law and since orders of assessment have been passed on 22/08/94 i.e. after two & half years expired on 26/05/94 which is not permitted under law, it deserves to be set aside. Appellate Authority

after due consideration of material, recorded finding that on a perusal of record, at page 53 Note, assessing authority while referring matter for extension on 06/11/93 reported that since order was passed by High Court on 27/11/91 and two years' period was going to expire, time be extended as provided U/s 10-B(2) of the Act and even after extension of six months, further extension was sought by assessing authority also presuming the commencement of period of two years from 27/11/91 and since no second extension beyond a period of six months is permitted which indisputably, expired on 26/05/94, in view of statutory period as provided U/S 10-B of the Act, appellate authority allowed all appeals preferred by the Assessee holding assessments being time barred; against which, the Revenue preferred further appeals before the Tax Board where finding recorded by appellate authority was affirmed holding that from the Notes at page 53 & 54 it is clear that order of this Court dt.27/11/91 well being communicated on 28/11/91 and statutory period provided under the Act has expired much before assessment orders were passed by the authority, therefore, all appeals preferred by Revenue were dismissed. Hence these revision petitions.

Counsel for the Revenue submits that after orders were passed on 27/11/91, application was filed for obtaining certified copy whereof on 27-28/11/91 which was made available to Government Advocate on 27/02/92; as such period as provided U/s 10-B of the Act will commence from the date certified copy was made available their Advocate and not from the date ordered passed by this Court and taking date of

availability of certified copy to Government Advocate, the assessing authority was within limitation for having passed assessment orders on 22/08/94 which is within period of limitation and in such circumstances, both the concerned authorities have committed serious error of law in interpreting provisions of the Act and such finding requires interference by this Court.

On the other hand, Counsel for respondent Assessee submits that it is for the first time in instant petitions, the Revenue has pleaded new case with regard to availability of time taken in preparation of certified copy of the order of this Court and delivery whereof to Government Advocate on 27/02/92. It was nowhere their case either before Appellate authority or Tax Board rather it has throughout been proceeding from the date of communication of orders of this Court dt.27/11/91 to the authority and time was sought for extension as is apparent from the Note at page 53 & 54 where date of communication received of order of this Court was recorded as 27/11/91, itself and since such facts were not available, cannot be pleaded for first time in revision petition where only question of law is required to be looked into.

I have considered contentions of Counsel for the parties and with their assistance, examined material on record. The appellate authority and so also the Tax Board both have recorded finding of fact that communication of order of this Court dt. 27/11/91 was made available to the Assessing authority on the date of pronouncement and while the time was sought for extension of six months, it was

proceeded on the basis of communication of order of this Court commencing from 27/11/91 and only for this good reason, six months' time was further sought to be extended. U/s 10-B of the Act two years' period is statutorily provided for the Assessing authority to make assessments and the Commissioner under the Act for reasons to be recorded in writing could extend period further not exceeding six months; as such authority competent in exercise of powers U/s 10-B (2) is restricted not to exceed six months; meaning thereby two years' period provided under statute for making assessment can be extended only for six months only upon reasons to be recorded in writing and not for any further period.

Finding of fact has been recorded with regard to date of communication of order dt.27/11/91 of this Court to the Assessing authority and based thereon, finding has been recorded that assessment orders have passed after expiry of two & half years which expired on 26/05/94 and indisputably assessment orders were passed on 22/08/94 much after expiry of statutory provided under the Act. In my opinion, instant revision petitions are based on question of fact and no legal question arises for consideration therein and hence they are devoid of merit.

Consequently these revision petitions fail and are hereby dismissed. No order as to costs.

(Ajay Rastogi), J.

K.Khatri/26STR2002